



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201331010

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 08 2013

Uniform Issue List: 402.00-00 and 408.03-00

T:EP: RA:TI

Legend:

Taxpayer A	=
Plan B	=
Company C	=
Financial Institution D	=
IRA E	=
Financial Institution F	=
IRA G	=
Financial Institution H	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=
Amount 6	=
Amount 7	=
Amount 8	=
Amount 9	=
Amount 10	=

Dear :

This letter is in response to a request for a letter ruling dated September 27, 2011, as supplemented by additional information dated January 4, 2012, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in sections 402(c)(3) and 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from Plan B and Amount 6 from IRA E, respectively.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he took distributions of Amount 1 from Plan B and Amount 6 from IRA E. The distribution of Amount 1 was subject to percent withholding for federal income tax (Amount 2) under section 3405(c) of the Code. Coinciding with the distribution of Amount 6 from IRA E, Amount 7 was remitted to the Internal Revenue Service ("Service") to cover the withholding tax and penalties owed on Amount 6. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by sections 402(c)(3)(A) and 408(d)(3)(A) of the Code with respect to Amounts 2 and 7 that were withheld on distributions from Plan B and IRA E, respectively, was the result of Taxpayer A not knowing how the income tax withholding rules could affect the amount of the Plan B or IRA E distributions that could be rolled over.

Taxpayer A participated in Plan B, a cash or deferred arrangement under section 401(k) of the Code, sponsored by his employer (Company C). Funds in Plan B were held by Financial Institution D. In July of 20 , Taxpayer A was terminated from his position with Company C. In order to cover his living expenses and monthly alimony obligation, on August 1, 20 , Taxpayer A took a distribution of Amount 1 from Plan B. From this distribution: 1) Amount 2 represents mandatory withholding of percent of the distribution which was paid to the Service; 2) Amount 3 was used to pay off a loan owed to Plan B; 3) Amount 4 was paid to Taxpayer A; and 4) on September 21, 20 a portion of Amount 4 (i.e., Amount 5) was deposited by Taxpayer A into IRA G with Financial Institution H.

In addition to participating in Plan B, Taxpayer A maintained IRA E with Financial Institution F. Also for purposes of financial planning, on July 29, 20 , Taxpayer A withdrew Amount 6 from IRA E. From this distribution: 1) Amount 7 represents percent withholding for federal income tax as elected by Taxpayer A; 2) Amount 8 was paid to Taxpayer A; and 3) on July 29, 20 , a portion of Amount 8 (i.e., Amount 9) was deposited by Taxpayer A into IRA G with Financial Institution H. The total amount from the distributions of Amounts 1 and 6 deposited into IRA G was Amount 10 (Amount 5 plus Amount 9).

Taxpayer A was eventually able to find new employment. At the time he took the distributions from Plan B and IRA E, Taxpayer A was not fully aware of the tax consequences which included a penalty (equal to percent of Amount 6) for

premature distributions from an IRA under section 72(t) of the Code. The distribution of Amount 1 from Plan B, however, was not subject to the 10 percent penalty because it satisfied an exception to the application of Code section 72(t). When Taxpayer A filed his Form 1040 Tax Return for 2001, it was anticipated he would receive a refund of a significant percentage of the taxes withheld from both the distribution of Amount 1 from Plan B pursuant to section 3405(c) of the Code and the distribution of Amount 6 from IRA E pursuant to section 3405(b) of the Code.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement contained in sections 402(c)(3) and 408(d)(3) of the Code with respect to the full amount of the refund of income taxes withheld on both the distribution from Plan B and the distribution from IRA E that Taxpayer A anticipated receiving when he filed his tax return for 2001.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 1.402(c)-2, Q&A-11, of the Income Tax Regulations ("Regulations") allows an employee to roll over an amount equal to the 20 percent withholding of federal income taxes within the 60-day period if the employee has other funds to do the rollover.

Specifically, the Regulation provides that:

if an eligible rollover distribution is paid to an employee, and the employee contributes all or part of the eligible rollover distribution to an eligible retirement

plan within 60 days, the amount contributed is not currently includible in gross income, provided that it is contributed to the eligible retirement plan no later than the 60th day following the day on which the employee received the distribution. If more than one distribution is received by an employee from a qualified plan during a taxable year, the 60-day rule applies separately to each distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee. However, if all or any portion of an amount equal to the amount withheld is not contributed as a rollover, it is included in the employee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 402(c)(3)(B) and 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that Taxpayer A withdrew Amount 1 from Plan B and Amount 6 from IRA E with the stated intent of covering his living and alimony expenses while he looked for new employment. From the distributions of Amounts 1 and 6, Amounts 2 and 7, respectively, were remitted to the Service for income tax withholding purposes. Taxpayer A asserts that had he known how the income tax withholding rules can affect the amount of the Plan B or IRA E distributions that can be rolled over, he would have chosen to withhold less so that he could have transferred a greater amount of the distributions to IRA G.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another qualified plan or IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over an amount equal to the Amount 2 withholdings on the Plan B distribution of Amount 1.

Twenty percent (Amount 2) of the distribution of Amount 1 from Plan B was subject to mandatory income tax withholding. Section 1.402(c)-2, Q&A-11, of the Regulations provides that an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee. While Taxpayer A was permitted to use funds equal to Amount 2 from other sources for deposit into IRA G during the 60-day rollover period, he had no funds available from any source. The information presented indicates that the failure to roll over funds equal to the amount withheld (Amount 2) on the distribution of Amount 1 into another qualified plan or IRA within the 60-day rollover period was because Taxpayer A had no other funds which could be used for this purpose. Under these circumstances, the Service has no authority to extend the 60-day rollover period contained in section 1.402(c)-2, Q&A-11 of the Regulations, with respect to any refund of taxes withheld mandatorily on the distribution of Amount 1 from Plan B.

Regarding the distribution of Amount 6 from IRA E, a portion (Amount 7) of this distribution was remitted to the Service for income tax withholding purposes. The portion remitted to the Service (Amount 7) equaled 1 percent of Amount 6. It should be noted that Taxpayer A elected this withholding. Section 3405(b) of the Code provides that nonperiodic distributions from IRAs are subject to 10 percent withholding. However, a taxpayer may elect out of the 10 percent withholding requirement. The information presented indicates that the failure to roll over funds equal to the amount remitted to the Service (Amount 7) for income tax withholding purposes (Amount 7) on the distribution of Amount 6 into another qualified plan or IRA within the 60-day rollover period was, at all times, within the reasonable control of Taxpayer A. Taxpayer A could have elected to roll over Amount 7, instead of having it withheld and remitted to the Service, by checking the "Do not withhold Federal income tax from my IRA distribution" box provided for on the distribution form for IRA E.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement contained in sections 402(c)(3) and 408(d)(3) of the Code with respect to the amount of the taxes withheld on distributions from Plan B and IRA E.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

201331010

If you wish to inquire about this ruling, please contact
, at () .

(I.D. #),

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

cc: